United Nations S/PV.4229

Security Council

Fifty-fifth year

Provisional

4229th meeting

Tuesday, 21 November 2000, 10.30 a.m.

New York

President:	Mr. van Walsum	(Netherlands)
Members:	Argentina	Mr. Cappagli
	Bangladesh	Mr. Chowdhury
	Canada	Mr. Heinbecker
	China	Mr. Wang Yingfan
	France	Mr. Levitte
	Jamaica	Miss Durrant
	Malaysia	Mr. Mohammad Kamal
	Mali	Mr. Ouane
	Namibia	Mrs. Ashipala-Musavyi
	Russian Federation	Mr. Lavrov
	Tunisia	Mr. Ben Youssef
	Ukraine	Mr. Krokhmal
	United Kingdom of Great Britain and Northern Ireland	Mr. Eldon
	United States of America	Mr. Cunningham

Agenda

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States, between 1 January and 31 December 1994

This record contains the text of speeches delivered in English and of the interpretation of speeches delivered in the other languages. The final text will be printed in the *Official Records of the Security Council*. Corrections should be submitted to the original languages only. They should be incorporated in a copy of the record and sent under the signature of a member of the delegation concerned to the Chief of the Verbatim Reporting Service, room C-178.

00-75591 (E)

The meeting was called to order at 10.50 a.m.

Adoption of the agenda

The agenda was adopted.

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States, between 1 January and 31 December 1994

The President: In accordance with the understanding reached in the Council's prior consultations, I shall take it that the Security Council decides to extend an invitation under rule 39 of its provisional rules of procedure to Judge Claude Jorda, President of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991.

It is so decided.

I welcome Judge Jorda and invite him to take a seat at the Council table.

In accordance with the understanding reached in the Council's prior consultations, I shall take it that the Security Council decides to extend an invitation under rule 39 of its provisional rules of procedure to Judge Navanethem Pillay, President of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January 1994 and 31 December 1994.

It is so decided.

I welcome Judge Pillay and invite her to take a seat at the Council table.

In accordance with the understanding reached in the Council's prior consultations, I shall take it that the Security Council decides to extend an invitation under rule 39 of its provisional rules of procedure to Ms. Carla Del Ponte, Prosecutor of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 and of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994.

It is so decided.

I welcome Ms. Del Ponte and invite her to take a seat at the Council table.

The Security Council will now begin its consideration of the item on its agenda. The Council is meeting in accordance with the understanding reached in its prior consultations. At this meeting the Security Council will hear briefings by the Presidents and Prosecutor of the International Tribunals for the Former Yugoslavia and Rwanda.

I give the floor to Judge Jorda, President of the International Tribunal for the Former Yugoslavia, to whom the Council has extended an invitation under rule 39 of its provisional rules of procedure, in order to brief the Council.

Judge Jorda *(spoke in French)*: It is a great honour for me to be able to address the Council on the state of the Tribunal for the second time in less than five months. I wish to express my profound gratitude for all the interest the Council has shown in the work we are doing in The Hague.

In my view, the presence at my side of Judge Pillay, President of the International Criminal Tribunal for Rwanda, and Prosecutor Del Ponte is symbolic and of special importance. For the first time ever, we, the representatives of the International Criminal Tribunals established more than 50 years after Nuremberg, stand all three together before the Council to report on our work. Our respective presentations should provide the Council with an overview of the two Tribunals' judicial

activities, which, as I have said before, cannot be divorced from the penal policy of the Prosecutor.

Yesterday I presented the annual report of the Tribunal to all the members of the General Assembly. Today I would like to emphasize two points from the report that I think are particularly relevant at this time. First of all, if we wish to fulfil our mission within a short time and ensure that the reform undertaken last June with the Council's assistance and under its authority comes to full fruition, we must take other internal initiatives as well. Next, as my predecessors have done before the Council, I will also underscore the importance of the cooperation of all States for the fulfilment of our mandate.

First I will talk about the reforms of the operations and structures of the Tribunal. Last June, my colleagues and I presented to the Council a draft reform of the operations and structures of the Tribunal. We held the view, as we still do, that if no changes were made, we could not hope to fulfil our mandate before the year 2016, not including the time taken for appeals — that is, over 15 years from now. We draw the Council's attention to the fact that this state of affairs could well compromise the accomplishment of our mission, which, need I recall, is a temporary one and must make it possible to have a lasting return to peace in the Balkans. We also highlighted the risk that the fundamental right of the accused to be tried without undue delay might be jeopardized, as has already been borne out by the length of time the accused currently spend in preventive detention. Lastly, we stressed, and continue to stress, the financial cost to the United Nations of such a situation; and, more fundamentally — I know the Council is particularly sensitive to this — we noted the dangers that a situation of the kind I have described — that is, without any change — represents to the credibility of international justice, which it is extremely necessary to ensure at this juncture, when States are due to ratify the treaty instituting the future International Criminal Court.

In order to remedy this situation — that is to say, to fulfil our mandate by the year 2007 instead of 2016, almost 10 years earlier — we proposed a measure, a set of solutions, that is both pragmatic and flexible, since it can then be adapted to the future needs of the Tribunal, especially to those dictated by arrests and indictments to come. This solution, in our view, also has the advantage of being less costly in the long term. As the Council knows, it consists of creating a reserve pool of *ad litem* judges from all of the Member States, who would be called upon to rule on specific cases when so required. Furthermore, along with this measure, we also suggested that the pre-trial phase be accelerated, more responsibility for which would lie with qualified jurists — under the authority of judges, of course — thus enabling the judges to devote all their time to actually trying the cases. We are already striving to implement this second measure.

During my statement to the Council last June, I made clear my wish that the reforms would be undertaken rapidly and suggested that the Tribunal cooperate closely to this end. I am particularly grateful to the Council for having set up so swiftly a working group to examine our proposals and for having agreed to receive the representatives of the Tribunal. The group met several times, and it already appears that a consensus is possible. It goes without saying that should this reform be fully implemented by 2001, our work would then be greatly facilitated. Clearly I am asking the Council to give priority to this.

Nonetheless, as I underscored yesterday before the General Assembly, my colleagues and I are aware that these solutions will not be fully effective unless other, this time internal, reforms are carried out as well, reforms that, I assure the Council, will not require the Council to mobilize any additional resources. Thus, we are moving in the following new directions. First, we must amend the rules for administering and presenting evidence so as to make them more effective thus addressing one of the main causes of delays. Then we must bolster the judge's power of control over the conduct of the proceedings in order to expedite the trials, of course with due regard for the demands of fairness, and above all, mindful of the need to avoid all delaying tactics, no matter their source.

Finally, in a few weeks, I will also propose to my colleagues, the Registrar and the Prosecutor, new measures enabling the organs of the Tribunal — that is, the Chambers, the President, the Prosecutor and the Registrar — to jointly determine their longer-term judicial priorities and to cooperate more closely in fulfilling them within as short a time as possible.

Why? Because I am convinced that all these reforms — of the necessity for which I know the Council is equally aware — depend for their full effect on the efforts of every organ of the Tribunal, and

especially the Registry and Administration, to implement them in a coordinated manner, ever mindful of the need to manage our resources better, ultimately in the sole interest of justice.

I now come to my second point, which is concerned with a recurring theme that my predecessors have often and even regularly addressed in this Chamber: the cooperation of States in the arrest of the accused and the gathering of evidence.

The Tribunal's situation has greatly improved as regards arrests and the transfer of evidence. Of the 65 accused, 38 are now in detention in The Hague; 13 were apprehended over the course of this past year. A significant quantity of documents was also handed over to the Tribunal. This progress is primarily the result of the enhanced cooperation of all the Member States, for which I am grateful. Through the international organizations, and more specifically the Stabilization Force and the Kosovo Force, they have been cooperating more closely in the full accomplishment of our mandate. It also stems from the increased cooperation of the Republic of Bosnia and Herzegovina and, more recently, the Republic of Croatia. As the Council knows, the Tribunal does not have a police force to enforce its own decisions and must be able to rely on the unwavering support of the States of the international community.

We all believe that the political upheavals which the Balkans have recently witnessed are, in this respect, cause for new hope. The advent of democratic forces in Croatia demonstrates the resolve of the Croatian people to put the difficult times they have endured behind them. Similarly, the return of democracy to the Federal Republic of Yugoslavia and the State's reintegration into the community of nations attest to the Yugoslav people's determination to break with the recent years of war.

Let there be no doubt that these are major events from which we all take satisfaction and which now allow us to hope that the Balkan States will fully respect their international commitments and cooperate more closely in the accomplishment of our mission.

Are all our difficulties behind us? I do not believe so. Let us not forget, however — and this is the message I wish to convey in this great Chamber — that the highest-ranking political and military officials remain at large. It is precisely and above all these accused high-ranking military and political leaders who must be tried by an International Tribunal that is the guarantor of the peace and security of mankind, for it is clearly and principally they who are seriously endangering the international public order of which we are the guardians.

I therefore appeal to the Security Council to use all its influence over Member States, and more especially the successor States of the former Yugoslavia, to persuade them to arrest and bring before the Tribunal the accused — all the accused — in their territory. It is imperative to act rapidly since, as we know and have seen, nationalism in its most virulent form is still alive and could yet compromise the demanding and sometimes painful exercise of justice, without which there can be no deep-rooted and lasting peace in the Balkans. This sentiment was broadly expressed in the General Assembly Hall yesterday.

Like my predecessors before me, I will not hesitate to inform the Council of all serious failures of any State concerned to meet the obligation to cooperate with the Tribunal, nor, of course, will I neglect to notify it of all the measures that States implement in good faith to remedy such failure to cooperate.

I am extremely grateful for the Council's tireless support for our work and thank members warmly for their attention.

The President: I give the floor to Judge Pillay, President of the International Criminal Tribunal for Rwanda, to whom the Council has extended an invitation under rule 39 of its provisional rules of procedure, in order to brief the Council.

Ms. Pillay: On behalf of the judges of the International Criminal Tribunal for Rwanda (ICTR), I thank you very kindly, Sir, for your invitation. This is an historic occasion for the ICTR. Despite our statutory obligation to come and report to the Council, this is actually the first time that we are doing so. If that was an oversight on our part, we apologize for it and we do appreciate this invitation.

The point I made in my statement to the General Assembly yesterday was that, all in all, we have had a dynamic past year at the ICTR and that the jurisprudence that is emerging from the Tribunal is making an important contribution towards realizing the vision of respect for the international rule of law.

As to what we achieved in the first year of this, our second mandate, in this one year we delivered three

judgements. One was on a guilty plea of the Belgian national Georges Ruggiu; the others were convictions for genocide and sentences of life imprisonment. One trial is ongoing and complete, and that judgement is in the process of deliberation.

For the period under review, the three Trial Chambers were occupied in deliberating and ruling on 223 pre-trial motions in various cases, many of which are multi-accused and multi-trials involving 33 indicted persons. I mention this figure in order to clarify what we perceive as questions addressed to us on why we have not made sufficient use of the courtrooms. Now, as members know, under article 20 of the Statute, the rights of the accused must be respected and we must hear and respond to each of these motions. The motions relate to amendments and objections to the indictment, the joinder or severance of trials and witness protection measures — in other words, all the pre-trial procedures that enable us to be ready for the actual trials. We have also held initial appearances of new indictees as well as of the cases of accused whose indictments have been amended.

In this period, the Appeals Chamber has significantly alleviated the outstanding role of appeals. They have in fact delivered decisions on 24 of 34 interlocutory appeals. I mention this factor because, along with the outstanding motions, the interlocutory appeals held up or stayed trial proceedings.

The Appeals Chamber review decision of 31 March 2000 in the case of the Prosecutor versus John Bosco Barayagwiza underscored many of the challenges that the trial courts face, including the expeditious cooperation of Member States in the extradition of indicated suspects to the ICTR. In that particular case, what concerned the court was that delays in cooperation on the part of a Member State may have contributed to a violation of the accused's rights.

Other challenges are the appointment of counsel of choice for indigent accused. I am pleased to point out that the opinion of the Appeals Chamber is that indigent accused are not entitled, as of right, to counsel of choice. I mention that fact because there have been questions raised on the large percentage of the budget that goes towards the costs of defence of accused persons. Other factors are the impact of the discovery of additional facts which have become known after the indictments are confirmed.

These fundamental issues, among others, were addressed by the Appeals Chamber and they not only provide authority and guidelines for the Trial Chambers, but form the basis for groundbreaking new law that will influence the development of international jurisprudence. But for the immediate purposes of the Trial Chambers, the impact is that we are now able to proceed with trials. For instance, we could not proceed with the trial where there was an interlocutory appeal pending on whether we had rightly ordered a joint trial of multiple accused.

So this first year of our second mandate can be characterized as the period of intensive judicial effort on the part of the Trial Chambers and the Appeals Chambers to clear the backlog of pre-trial motions and interlocutory appeals that were carried over from the previous mandate. The consequence of this pre-trial work is that we can now plan for the year 2001.

With regard to the utilization of courtrooms, the Trial Chambers, as I have stated, were seized with the large number of pre-trial motions. In the past, pre-trial motions were heard in the courtroom and that involved a full complement of court staff being in attendance and counsel for the prosecution and defence participating in the proceedings.

The judges have amended the rules of procedure and evidence to allow for these motions to be considered solely on the briefs submitted by the parties instead of having a hearing in open court.

As a result of this amended rule, pre-trial motions may be dispensed with more expeditiously since there is no longer a need to schedule hearings in these matters around the availability of defence counsel and, with regard to our Tribunal, the factor that does impact our work is that almost all the defence counsel have their offices far away from the Tribunal and have to be flown in at the expense of the Tribunal.

Most of these motions have been filed since the new amendment and they have been decided on brief and that then reduced the number of days that we needed to use the courtrooms.

The use of the courtrooms was further reduced when court dates that had been scheduled by the judges were vacated due to trials not commencing as originally scheduled. This resulted from the fact that court documents had not been translated on time and

complete disclosure of trial materials had not been made to the defence.

And here, let me quote as an example the case that is labelled "The media case" involving three accused. This trial was originally scheduled by my Chamber for 29 May 2000, was moved to 5 June 2000, rescheduled to 18 September and, subsequently, the hearing began on 23 October. The reason is the difficulties over the Registry providing the required translation services and court management support services. That is an illustration of administrative procedures over which the judges do not have control, but which end up delaying our procedures and in some instances we could not begin trials because of pending interlocutory appeals.

Thus, during the past year, the nine trial and the five appeals judges have worked closely together to envision solutions to the apparent delays in the commencement of trials. We were able to convene three plenary sessions with the attendance of all 14 judges. These were held in Arusha and we discussed judicial and policy issues concerning the ICTR and revised the rules in order to expedite procedures and, for the first time since our existence, the two Tribunals were able to meet at a meeting in the United Kingdom, courtesy of the British Government and of the Office of Legal Affairs, which took the initiative to organize the seminar.

All in all I would say it has been a dynamic year for us and the positive consequence of all the judicial, administrative and prosecutorial endeavours during the past year has been to prepare the ground for uninterrupted trials.

Apart from the three trials that began this year and will continue next year, we have scheduled new trials into the first six months of next year — trials that involve the trials of at least 13 persons involved in the Government cases, the military cases and areas such as Butare.

We would therefore like to assure the Council that the ICTR is determined to do its utmost to complete the cases of the 35 persons awaiting trial within the period of the mandate and we see this as a reasonable possibility. We cannot at this stage, of course, predict the number of new suspects that may be indicted. This, I think, is an area that will be addressed by the Prosecutor.

We support the request made by the Appeals Chamber for the addition of two judges to meet the extra workload and, at the plenary meeting of 18 February 2000,the judges unanimously supported the recommendations of the Expert Group for the enlargement of the Appeals Chamber serving both Tribunals. It was also agreed that the two additional judges shall be drawn from the pool of existing ICTR judges, who will then serve in The Hague as members of both Appeals Chambers.

Many of the logistical and administrative difficulties that were highlighted in the past as causes of delay in the progress of trials have been, and are being, addressed by the judges and the Registrar. However, the judges continue to stress that the focal point for the administration of services and resources should be the judicial functions of the Tribunal.

We have now reached a critical stage where trials will begin next year and greater resources and personnel are required for the preparation of judgements. In this regard, we note with appreciation the efforts made by the Secretary-General in respect of the cooperation and assistance he has provided us. In the main, he has sent us a court consultant who has projected our requisite needs for more expeditious functioning.

We have also addressed the Council with regard to compensation in instances of the miscarriage of justice, as the ICTR also wishes to be seen to be complying with international obligations in this regard. With regard to compensation for victims of atrocities in Rwanda, the judges empathize with their plight, but are of the view that this is not a matter that falls within the mandate of the ICTR.

Questions have also been raised with us with regard to the possibility of holding trials inside Rwanda and the view of the judges is that we operate under the Statute, which determines that the seat of the Tribunal is in Arusha, Tanzania. We do have the power, when the need arises, to hold sessions elsewhere, but this would be a decision of the Trial Chamber. Mainly it is a decision of the Council to consider whether the Statute needs to be amended with regard to moving the seat of the Tribunal. Once again, the judges empathize with the points of view of Rwandans who wish to see justice being performed visibly in their presence.

I wish finally to express our deep appreciation to Member States, to the Government of Rwanda and to

the Government of Tanzania, for their cooperation, as well as to Member States that have transferred into our custody the 45 persons, most of whom are members of the former interim government of Rwanda.

The picture of our progress and our trials is different from that painted by my colleague Judge Jorda. We owe this mainly to the fact that we have had the cooperation of States.

The President: I thank Judge Pillay for her briefing.

I give the floor to Ms. Carla Del Ponte, Prosecutor for the International Criminal Tribunal for the Former Yugoslavia and for the International Criminal Tribunal for Rwanda, to whom the Council has extended an invitation under rule 39 of its provisional rules of procedure, in order to brief the Council.

Ms. Del Ponte: Once again it is my honour to appear before the Council to give a briefing on the work of the Office of the Prosecutor for Rwanda and for the former Yugoslavia. Since I last addressed the Council, important developments have taken place in both Tribunals.

In recent months I have spent a considerable amount of time in Arusha and in Kigali on the business of the International Criminal Tribunal for Rwanda (ICTR). In that Tribunal we have just passed through a difficult period of reorganizing the caseload and getting cases ready for trial. A great deal of legal and organizational work was done behind the scenes in the pre-trial stages of the biggest cases. During that time we did not see many prosecutions under way in the courtrooms, and that is always a source of concern to a prosecutor, particularly when accused persons are in custody. However, I am pleased to be able to report that some of those big cases have now started, and that others are scheduled in the court timetable to begin very soon, as the President of the Tribunal has just informed the Council.

At present, 45 accused are in custody. Three trials, involving seven accused, are in progress. A further eight cases, involving 22 accused, are at the pre-trial stage and will gradually become ready to begin between now and June next year. Among them are the two "government" cases — involving senior ministers — and the "military" case — involving high-ranking army figures. In all those cases, we were not able to begin the trials until pre-trial legal motions had been decided. Another of our biggest cases, the "media" case, started last month. That is the prosecution in which evidence is being heard about the alleged central role played by the media in the Rwandan genocide. That case is recognized as breaking new legal ground and is attracting a great deal of interest.

In addition to the work of trials, the Tribunal has heard and decided a number of important appeals. Two of those were heard during my last trip to Arusha, but the Council will perhaps be aware that, shortly before that, former Prime Minister Jean Kambanda was unsuccessful in his appeal against his conviction and his sentence of life imprisonment. It is encouraging for me as Prosecutor to see that the convictions we were able to obtain before the Trial Chambers are able to withstand the scrutiny of Appeal Court judges. For my Office, this means that the job of prosecuting these enormous crimes can be done, and is being done, to the necessary high criminal standard.

The Rwanda Tribunal is therefore entering a very intensive period in its mandate. Coming months will see the most senior figures face justice. Those trials will be the most serious prosecutions the Tribunal will ever have to deal with. They are the reason the Tribunal was created, and we have been waiting for these cases to come to court for many months. Now at last we will see in public the results of all the preparation that has been done.

In the ICTR, other cases will also be in the pipeline. Our investigations continue, and I hope to be signing five significant new indictments in coming weeks. I believe there are good prospects for several new arrests before the end of the year. Thereafter, I will make it a priority to draw up a longer-term plan for our investigations, and I will present that to the President of the Tribunal as a basis for the kind of strategic forward planning we wish with regard to the Rwanda Tribunal's mandate. I agree that now is the right time to undertake such an exercise, and I believe that we have now reached a sufficiently advanced stage in our information gathering to make that kind of exercise worthwhile.

In short, we can expect considerable progress to be made in the Rwanda Tribunal in the coming months. But I would like to see progress made outside the courtrooms and in other areas. We must make our work

more relevant to the people of Rwanda. A new information centre has been opened in Kigali, but I would like to go further. I will ask Trial Chambers to hold hearings in Rwanda instead of in Arusha, so that the people of Rwanda can see at first hand the contribution being made by the international justice system to the restoration and maintenance of peace and security. Holding trial hearings in Rwanda itself will also greatly improve access to the court for witnesses and victims. The situation in Rwanda has greatly improved since 1994, and our relations with the Government have now reached a stage where proper guarantees can be given and relied upon for the holding of ICTR trials in Rwanda itself. Indeed, it might even be possible to contemplate moving the entire Tribunal to Kigali. Nothing would more powerfully demonstrate the international community's commitment to justice.

Nor should we forget the role of victims in the justice process. The voices of survivors and of the relatives of those killed are not sufficiently heard. Victims have almost no rights with regard to participating in the trial process, despite the widespread acceptance nowadays that victims should be allowed to do so. And those remarks apply equally to the Yugoslav Tribunal, where the position of victims is no better, and where the accused have also amassed personal fortunes at the expense of their country and its citizens. I believe that the judges share my views in principle but do not favour giving the Tribunal itself the task of compensating victims, preferring to create a claims commission or its equivalent. It is regrettable that the Tribunal's statute makes no provision for victim participation during trials, and makes only minimal provision for compensation and restitution to people whose lives have been destroyed.

And yet, my Office is having considerable success in tracing and freezing large amounts of money in the personal accounts of the accused, money that could very properly be applied by the courts to the compensation of citizens who deserve it. We should therefore give victims the right to express themselves, and should allow their voices to be heard during the proceedings. In the event of a conviction, that would then create a legal basis for the judges to decide upon the confiscation of monies sequestrated from the accused. The money might also go towards defraying the costs of the prosecution. I would therefore respectfully suggest to the Council that the present system falls short of delivering justice to the peoples of Rwanda and of the former Yugoslavia, and I would invite members to give serious and urgent consideration to any change that would remove this lacuna in our process.

Let me now turn to the International Criminal Tribunal for the Former Yugoslavia (ICTY). I would like first to give the Council an updated account of our work in Kosovo. As the Council will recall, just as soon as our teams were able to gain access to Kosovo, we embarked upon an ambitious project of exhuming and forensically examining mass graves throughout Kosovo. In 1999 we recovered 2,108 bodies from 195 locations. That was as much as could be achieved last year. This year, I was eager to complete the task before evidence deteriorated or was lost. Again working with the assistance of professionals provided to my Office by United Nations Member States and by Switzerland, our teams assessed a further 325 sites, exhumed 1,577 bodies and found incomplete remains in a further 258 instances. Pathologists conducted 1,807 autopsies on victims. As a result, we have finished our exhumation programme and can now build up a complete picture of the extent and pattern of crimes.

My Office has not received all the reports from the various forensic teams. Our provisional total for the two years is almost 4,000 bodies, or parts of bodies, exhumed and examined. Of course, it will never be possible to provide an accurate figure for the number of people killed, because of deliberate attempts to burn the bodies or conceal them in other ways.

I might add that we also conducted exhumations in Croatia and in Bosnia and Herzegovina at eight sites, from which 491 bodies were recovered, as well as many parts of human bodies. A total of 619 autopsies were performed. That figure includes not only autopsies on bodies from ICTY exhumations, but also some autopsies which we performed on behalf of the Bosnian Commission on missing persons on bodies exhumed by the Bosnian authorities. We intend to continue with this exhumation work in Croatia and Bosnia next year.

Before I leave the subject of Kosovo, I would merely add that my Office has received a number of passionate pleas to investigate allegations of continuing "ethnic cleansing" against the remaining Serb and Roma populations. This is unacceptable, and sows the seeds of future revenge and lasting instability in the region. For the Tribunal's jurisdiction to

encompass crimes against humanity committed in Kosovo after the deployment of the Kosovo Force (KFOR), article 5 of the Tribunal's Statute should be modified, and the reference and requirement for there to be an armed conflict should be omitted, which would make the Statute compatible with that of the Rwanda Tribunal.

The ICTY's forced inaction on what has been happening in Kosovo since June 1999 undermines the Tribunal's historical credibility. We must ensure that the Tribunal's unique chance to bring justice to the population of the former Yugoslavia does not pass into history as having been flawed and biased in favour of one ethnic group over another. Besides, if we obtain this morally justified and necessary extension of our mandate, the Tribunal may become a deterrent factor against the ongoing "ethnic cleansing" campaign in Kosovo. The Council will be aware that, as the Tribunal's Statute is presently drafted, the requirement that crimes be linked to an armed conflict effectively precludes my Office from dealing with ongoing crimes in Kosovo. They lie outside the Tribunal's jurisdiction. I therefore formally request the Council to extend the Tribunal's jurisdiction in this respect.

This year I have also spent considerable time in discussions with the Croatian authorities about the level of cooperation being given to the ICTY. There has indeed been an improvement in relations in comparison with the previous policy of obstruction and delay adopted by the former Government. When I last addressed the Council I made that clear, but I also expressed the reservation that only time would tell whether Croatia would deliver on all its promises. I would like to be able to say that all problems have been completely removed, but I cannot. Where Croatia perceives cooperation to be against its political or narrow security interests, a real difficulty still exists.

One long-standing problem — the provision of Croatian material for use as evidence in the Kordic trial — remains unresolved, and time is fast running out for full compliance with the Court orders that are still outstanding in that case. And in relation to the 1995 Croatian campaign against Serbs in Croatia, known as Operation Storm, we still face a stubborn refusal to allow access to witnesses and documents that are essential for the completion of our investigations. Our work has been seriously delayed as a result.

In addition, there have recently been some very worrying signs that Croatia's cooperation is starting to take on some very negative aspects, which is demonstrated by the Government's leaking details of my requests to the media, with a negative media campaign against the Tribunal accompanying such leaks. This is a very disappointing development, and one that cannot be allowed to continue. Accordingly, it gives me no pleasure to have to say that I was right to reserve judgement earlier, and that my initial reservation was well founded. It is very sad that the improvement in cooperation in almost all other areas can be completely undermined by obstruction on a few key issues. I call on Croatia to overcome this remaining problem and return to the path of full cooperation with the Tribunal, and I invite the Council to intervene to ensure that Croatia finally cooperates fully with the Tribunal.

On a different topic, I am concerned about the rate at which indicted persons are being arrested. I have noticed that far fewer arrests have taken place recently. The last detention by Stabilization Force (SFOR) troops was of Dusko Sikirica, in June this year. But at the beginning of this year detentions had been occurring at a rate of approximately one a month. There may be no single explanation for the reduction in the number of arrests, but nevertheless it is disturbing to see that there have been no arrests in the second half of the year. Over recent months I have also been recommending the formation of a special police task force that would have jurisdiction over all of Bosnia and Herzegovina and the responsibility for apprehending indicted fugitives. Unfortunately, my suggested initiative has not yet been adopted.

It also appears that we can take little comfort from the results of the recent elections in Bosnia, after which we cannot expect any improvement in the attitude of some of the local authorities towards cooperation with the Tribunal. I would go even further and observe that the outcome of these elections is a direct consequence of the lack of resolve shown by the international community with respect to apprehensions. Allowing the main culprits of the Bosnian war to continue to enjoy freedom sent a wrong message both to the people and the politicians of Bosnia — namely, that criminal nationalism and its promoters are, and shall remain, beyond the reach of justice, and that the threatening words of the international communities are just that: words. Let us put an end to this dangerous

situation, for the sake of comprehensive justice, lasting peace and reconciliation. Once again, I urge the international forces in Bosnia to be robust and positive in their approach to the issue of apprehending all remaining indicted fugitives.

In the meantime, however, there is no shortage of trial work in the ICTY. I have many cases before the Trial Chambers and the Appeals Chamber, where significant appeals decisions are expected shortly, establishing, among other things, further jurisprudence on important issues of command responsibility and the law of genocide. In the Trial Chambers four prosecutions are now nearing completion. They include the trial of General Krstic, for crimes in Srebrenica, and Dario Kordic, who is accused of being responsible, as a senior politician, for crimes in the Lasva river valley in central Bosnia. One new trial, dealing with sexual offences in Foca, opened on 30 October, and a further eight cases are either ready for trial or being prepared for trial during the first half of 2001. These prosecutions will cover crimes in Sarajevo and in the Krajina region. The prosecution of Momcilo Krajisnik will be the first case to explore the responsibility of the Bosnian Serb leadership at the highest level.

In addition, our investigations continue, and more indictments can be expected in the coming months. My Office is therefore working under considerable pressure simultaneously on a number of fronts: new investigations; the preparation of indictments; pre-trial activities; the actual conduct of trials themselves, in which we must achieve both speed and fairness; and, finally, concluding all resulting appeals. We therefore have a considerable workload before us.

In completing my report on my activities, I must, of course, make reference to the recent developments in Belgrade, which have led to the removal of President Milosević from office, the lifting of sanctions and the return of the Federal Republic of Yugoslavia to the international community. The world has embraced President Koštunica despite the fact that he has repeatedly said that cooperation with the ICTY is not a priority for him. If he chose that phrase himself, I admire him. It is a clever line, one subject to different interpretations — a true politician's phrase.

But it is not a solution either, and the Milosević question cannot be so easily brushed aside. Milosević must be brought to trial before the International Tribunal. There is simply no alternative. After all the effort the international community has invested in the Balkans to restore peace to the region, after the weeks of NATO bombing to prevent massive human rights abuses against the citizens of Kosovo and given the enormous residual power and continuing influence of the hard-liners in Belgrade, it would be inconceivable to allow Milosević to walk away from the consequences of his actions. It is not enough to say that the loss of office is punishment enough, nor is it satisfactory to call him to account for election offences or some such national matter. We have already seen that there can be no deals with figures like Milosević. It is to the great credit of the international community that the temptation to offer him an easy escape route was resisted. The consequences for international criminal justice would have been devastating if that had happened.

I urge the Security Council not to allow the same result to be achieved in slow motion by lingering inactivity. It is of crucial importance that double standards be avoided in dealing with the former Yugoslavia, Croatia and Bosnia and Herzegovina. Any softening in the position adopted by the international community towards Yugoslavia will encourage other States to discontinue their cooperation with the ICTY. And we should not forget that other fugitives, such as Ratko Mladić, are in the former Yugoslavia. The authorities must also cooperate with the Tribunal in the arrest of these persons.

I intend to raise the question personally with President Koštunica, who last week invited me to begin to make arrangements to travel to Belgrade in the near future. Whatever President Koštunica may say, the surrender of Milosević is a priority. It is a priority for him; it is a priority for me; and it should, in my submission, also be a priority for the Security Council, which created the ICTY as a sub-organ of the Council, under Chapter VII of the United Nations Charter, not as a quick fix to a political crisis, but as a serious and lasting contribution to creating a meaningful and durable peace in the Balkans.

Finally, I feel compelled to make a few brief comments about some remarks made yesterday by the Russian representative in the General Assembly in response to a report of the President of the Tribunal, Judge Jorda. The Russian representative criticized the Tribunal, accusing it of being a political institution; of being anti-Serb; of being over-resourced; of improperly issuing sealed indictments; of being less than diligent

in my examination of NATO following the bombing campaign last year; of entering into an illegal agreement with NATO; and worst of all, of being a threat to the unity of accepted international law and of creating anarchy in international law by making new legal interpretations. I must say that such allegations are offensive and without foundation.

I could respond separately to each of these serious but unfounded allegations, but I would be abusing the time given to me to make my report. Any objective examination of the Tribunal's work would clearly demonstrate that the remarks of the Russian representative in the General Assembly yesterday are without any basis. I hope that I do not hear such allegations repeated again today. I am doubly disappointed that such statements were made because, unless they are maliciously or politically motivated, they have been based on misunderstandings, which could have been clarified had the Russian Government responded to my many requests to visit Moscow to discuss the work of the Tribunal.

The President: I thank Ms. Del Ponte for her substantial briefing.

Mr. Cunningham (United States of America): I would like to note at the outset that there has been no greater advocate for justice on this Council than the Netherlands, and my delegation and many others share the fundamental conviction that democratization and the pursuit of justice are fundamental pillars of our peacekeeping function.

I would like to welcome Judge Jorda, Judge Pillay and Chief Prosecutor Del Ponte to the Council. I appreciate their comments and insights and appreciate that they took the time to come to meet with us. Our agenda today spans the globe from Europe to Africa and brings together our shared belief in justice and reconciliation. Chief Prosecutor Del Ponte and Ambassador Holbrooke saw each other in Dayton a few days ago as we marked the fifth anniversary of the Dayton Peace Accords. Today, as Ambassador Holbrooke did in Dayton, I wish to publicly congratulate all three of our guests for their extraordinary efforts in the pursuit of justice.

This is a historic moment for the States of the former Yugoslavia. The three wartime leaders with whom we negotiated at Dayton five years ago have left the scene. President Tudjman has died and been replaced by President Mesić, an honourable man who ran for election on a platform that included full compliance with the International Tribunal for the Former Yugoslavia (ICTY). Milosević has been removed in a remarkable demonstration of the power of people. He has been replaced by President Koštunica, who has emphasized his commitment to democracy and the rule of law. President Izetbegović, of course, has honourably retired.

In Kosovo, the first democratic elections took place peacefully, and the people have chosen mostly moderate civilian leaders to represent them. In Bosnia itself the recent elections show slow but steady gains by new and moderate parties in the Federation and an overall long-term decline in support for nationalist parties since 1996, although it will clearly take time for the nationalist influence to abate fully, especially in the Republika Srpska. But in sum, the future trends for the Balkans are positive throughout the region. Slowly the States of the former Yugoslavia are recovering from the wounds of war and dissolution.

But the opportunities presented by these political changes will not be fully realized unless Judge Jorda and Ms. Del Ponte are successful in their important mission. Only through justice for the victims of the brutal wars that tore the Balkans apart can the process of healing and reconciliation be completed.

The Tribunal has scored some remarkable successes, particularly the arrest of Momcilo Krajisnik, one of the worst criminals from the war. I agree with Ms. Del Ponte that all the major indictees must end up in their rightful place behind bars and in The Hague, including in particular Karadzić, Mladić and, of course, Milosević.

There are many others who have not been indicted who should be. We noted last weekend at the fifth anniversary conference on the Dayton Peace Accords an important recent study by the International Crisis Group. That report documents many perpetrators who are at large, some of them serving in leadership positions in the Republika Srpska. These are exactly the sorts of officials whose day-to-day activities impede the full implementation of Dayton and prevent refugees from returning to their homes. We call on the Tribunal and others in the international community, including the High Representative and the Organization for Security and Cooperation in Europe, to take vigorous action to ensure that justice is done and that

the efforts of such people to block Dayton's full implementation are stopped.

All the countries of the region have an obligation to comply fully with the Tribunal. About a month ago, Ambassador Holbrooke met with President Koštunica and urged him to comply fully with his legal obligations to the Tribunal. We are delighted by indications that as a first step the Yugoslav authorities are preparing to reopen the ICTY's offices in Belgrade, which were closed by Milosević last year, and to permit Ms. Del Ponte to travel to Yugoslavia.

Last weekend, in Dayton, Ambassador Holbrooke also met with President Mesić of Croatia, whose efforts to transform his nation since his election also deserve the congratulations and support of the entire international community. He has repeatedly expressed his strong support for cooperation with the Tribunal. We encouraged him to redouble his efforts to ensure that Croatia's compliance with its obligations to the Tribunal is complete and timely. We encourage Croatia to cooperate fully.

The international community must also do its part. Justice must be swift, as well as true, and I am therefore pleased to announce my Government's support in principle for new *ad litem* judges for the ICTY, as President Jorda has proposed. We are working with our colleagues on the Council to respond positively to this proposal. These judges will provide an important boost to the Court, and help it clear a very busy docket. Given its workload, however, we do not believe that our common goals will be well served by extending the Tribunal's jurisdiction further. Quite simply, the Tribunal has more than enough to do under its current mandate, as President Jorda's plea for further support exemplifies. We believe that other problems in the region can be resolved more efficiently and with equal fairness through different mechanisms.

We do not believe that it would be appropriate to set arbitrary deadlines for the ICTY's jurisdiction or the completion of its mission. Our focus must be on assuring that the Tribunal is able to finish its job as quickly as possible. This process can best be aided if we provide it with the resources it needs, and if the States of the region give it their full cooperation.

Given the historic events in the Balkans, I have deliberately chosen to focus my remarks on the ICTY. However, the work of the Tribunal in Africa — the International Criminal Tribunal for Rwanda — is every bit as important as the work of the Tribunal in Europe. We are pleased that the ICTR has an excellent apprehension rate, with 44 out of 53 indictees in custody. We are also pleased that the ICTR is using three Chambers simultaneously, with seven defendants currently on trial.

The Lusaka process is at a dangerous impasse, an issue that will occupy this Council in the near future. One of the core issues in the crisis is the continued presence of units of the ex-Rwandan Armed Forces (ex-FAR) and Interahamwe fighting in the Democratic Republic of the Congo. Some maintain that this justifies the Rwandan intervention, while others insist that the ex-FAR/Interahamwe serves as a smokescreen for a broader agenda. I will leave that to regional experts to figure out. However, this Council is united in its call for the withdrawal of all foreign forces from the Democratic Republic of the Congo, in accordance with the Lusaka Agreement and Security Council resolution 1304 (2000). Frank discussion about the ex-FAR/Interahamwe will speed this process, while ignoring the subject will delay the departure of foreign forces.

The faster the leadership of the ex-FAR/Interahamwe is turned over the ICTR, and the faster the rank-and-file soldiers are demobilized, reintegrated or resettled, the easier it will be to resolve this issue.

There has been a reluctance on the part of some members of the Council to allow the very mention of the words "ex-FAR/Interahamwe" in any official document. That erodes our credibility and diminishes our effectiveness. If we yield to political sensitivities and omit reference to the architects of the 1994 Rwandan genocide, we do ourselves a disservice. I urge the Council to break its self-imposed silence on this issue.

The Tribunals stand as a manifestation of our common desire for justice in the face of horror. The implementation of their mandates has been difficult, expensive, time-consuming and often frustrating. We are about to embark on a similar procedure in Sierra Leone, and it will not get easier. However, we must never allow the obstacles to define our experience; rather, the goal of justice must shape our actions.

Mr. Chowdhury (Bangladesh): We welcome the presence of Judge Claude Jorda, Judge Navanethem Pillay and Chief Prosecutor Carla Del Ponte in the

Council and thank them for updating us on the work and overall situation of the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR). We thank all of them for their informative briefing on the current situation and for their suggestions for improving and enhancing the effectiveness of the ICTY and ICTR.

As Judge Pillay underlined in the General Assembly yesterday, the setting up by the Security Council of the ICTY and ICTR demonstrated the global commitment to justice and respect for international law. The Tribunals have had far-reaching implications. They have provided precedents for tribunals being established for Sierra Leone and Cambodia and for emerging international institutions based on the rule of law.

Turning to the ICTY, we are very appreciative of the professional way in which the President of that Tribunal has been carrying out his very complex responsibilities since assuming his present role a year ago. Bangladesh has always supported, and will continue to support, the work of the Tribunal in bringing to justice those responsible for the horrors in the former Yugoslavia. In this context, we welcome the fact that the Federal Republic of Yugoslavia has joined the community of nations and taken up its responsibilities and obligations for maintaining peace, thereby significantly brightening the prospects for justice.

The following points, we believe, are of particular relevance for the effective discharge of the ICTY's responsibilities.

The first point relates to the need for justice. In order to establish peace in the Balkans, justice must be served. The United Nations has taken a concrete approach in creating and supporting the ICTY, and has thereby sought to defend humanitarian values and contributed to the restoration and maintenance of peace in various parts of the world that have been beset by unspeakable violence. It is our combined responsibility to seek out those persons responsible for gross violations of international humanitarian laws and to ensure that they are tried.

Secondly, many criminals are still at large. Of the 65 individuals currently indicted by the ICTY, only 37 have been arrested; the rest have still not been apprehended. They include many high-ranking political leaders and military officials, who must account for their acts before the International Tribunal. The cooperation of all States, in particular the Balkan States, is essential in bringing the indictees to justice. The changed political climate in that region has brought new opportunities and hope that the accused will soon be arrested.

Thirdly, with regard to the capacity of the ICTY, we must pay close attention to the apparatus we have created to ensure justice. Many trials have yet to begin, but the Tribunal is already operating at maximum capacity, with an unprecedented workload. A judicial backlog is fast being built up. If it takes too long to complete the trials, then the purpose of delivering justice will be defeated. If the Tribunal has to deal with the projected number of cases without reform of the apparatus, it has been estimated that it may take another 15 years to complete its mission. This is unacceptable. Delaying justice is denying justice. We must find ways to speed up the trials and bring the mission to an end within a reasonable period. Our aim should be completion of the mission by 2005.

Fourthly, with regard to the reform of the penal policy, several options have been put forward for consideration. We would like to favourably consider the two-fold solution offered by Judge Jorda. This involves, first, expediting the pre-trial phase by giving more responsibility to qualified legal officers — which will free up the judges' time for the actual trial of cases — and, secondly, increasing the Tribunal's capacity by the creation of an *ad litem* pool of judges. We have considered these proposals at some length at the expert level in the Security Council. We welcome Judge Jorda's informing us that he is undertaking internal reform measures in the ICTY to make this two-fold solution fully effective.

It is now almost 10 years since the ICTY was created. There is a danger in unduly prolonging trials. The testimony becomes vague with the passage of time, and its authenticity fades. While the accused must be tried without undue delay, the quality and reliability of the process must also be ensured. We need to extend our full support to increasing the capacity of the Tribunal and ensuring speedy justice. We will continue to support this process in the Council as we are convinced that only justice can guarantee long-lasting peace.

Finally, a few words on the International Criminal Tribunal for Rwanda (ICTR). In Rwanda, as in the Balkans, the goal of achieving peace and reconciliation is related to justice. True reconciliation will be difficult to achieve without justice. We are happy to note that the ICTR's performance has improved substantially during what Judge Pillay has called a dynamic year. We encourage Judge Pillay to complete the 35 cases awaiting trial within the time of the mandate. It is important that necessary resources and support be provided to the Tribunal for this purpose by us, the Member States of the United Nations.

Mr. Levitte (France) (*spoke in French*): The reports submitted yesterday to the General Assembly by the President of the International Tribunal for Rwanda and the President of the International Tribunal for the Former Yugoslavia and the Presidents' statements to the Council today, as well as that of the Prosecutor, Carla Del Ponte, provide us a clear picture of the situation of both of these Tribunals.

The International Tribunal for the Former Yugoslavia has come to a turning point. On the one hand, particularly over the last three years, it has come to work at a very intense pace. The number of criminals publicly indicted and imprisoned is now greater than the number of accused still at large. On the other hand, historic changes have intervened in the Balkans. The year 2000 began with political change in Croatia, after presidential and legislative elections. The year then saw the victory of democratic forces in the Federal Republic of Yugoslavia and the elections of 24 September.

These changes should have a positive impact on the work of the International Tribunal for the Former Yugoslavia. Together with its European partners, France is convinced that the restoration of the rule of law and of peace in the region will aid and be aided by the bringing to trial of individuals suspected of very serious violations of international humanitarian law.

In this connection it is indispensable that all States and entities abide by their obligations to cooperate with the Tribunal. This appeal is addressed in particular to the Federal Republic of Yugoslavia. In this regard we take it as an encouraging sign that a Tribunal office is to be opened in Belgrade.

In our view Croatia appears to be showing a real political readiness to cooperate. I have in mind, in particular, the fact that the Government has revised its official position on the competence of the Tribunal. I am also thinking of Croatia's having recognized the official status of the local liaison bureau, and of the turning over of a suspect whose case had, on two earlier occasions, been brought before our Council by the President of the International Tribunal for the Former Yugoslavia. But I also clearly understood what Mrs. Carla Del Ponte said.

The International Tribunal for the Former Yugoslavia is rightly concerned that it be able to tackle its workload with the necessary efficacy and speed. Together the Judges have worked out a series of proposals that President Jorda himself submitted to our Council last June.

The ad hoc working group that the Council created in July has examined the proposed amendments to the Statute. These would, on the one hand, allow for instating *ad litem* judges in order to provide back up, as necessary, in the Trial Chambers; and, on the other hand, attach two International Criminal Tribunal for Rwanda judges to the Appeals Chamber that is shared by the two Tribunals. France hopes that — before the end of this month, under the Netherlands presidency — the Security Council will able to adopt these amendments to the Statutes of the two Tribunals.

By rapidly taking such a decision as to the *ad litem* judges and the Appeals Chamber, the Security Council will help the Tribunal accomplish its mission within a reasonable time-frame. This objective will also be served by the determination of the Prosecutor to have the investigations and indictments target the most highly placed civilian and military decision-makers. Moreover, we do not doubt that the Tribunal will find a way to take into account the emergence of local courts in the countries of the former Yugoslavia, as allowed by its Statute and Rules of Procedure and Evidence.

As for setting a time limit for the jurisdiction of the Tribunal, it is important that the Council's decision on this subject be adequately thought through. We suggest that the Secretary-General put relevant proposals to the Security Council.

We support the other amendments President Jorda proposed aimed at providing compensation for individuals unjustly prosecuted and incarcerated.

This brings me to the International Criminal Tribunal for Rwanda. This Tribunal has an essential

mission: to see that justice is done and to contribute to the restoration of peace in the Great Lakes region — a major Security Council concern.

The Tribunal is now coming fully into its own. It was the first international jurisdiction to hand down guilty verdicts for the crime of genocide. Its workload and responsibility are heavy and demanding. The Tribunal continues to encounter many challenges, in terms of its workload and management. I say this, notwithstanding the progress that has been made. I have in mind here the establishment of a third Trial Chamber. I am also thinking of the ongoing reform of the Offices of the Prosecutor in Kigali and Arusha. The Tribunal must make full use of its human and material resources, as well as of the possibilities afforded by its rules of procedure.

Year after year the Tribunal has run into many difficulties regarding its management.

We are aware that there are still unresolved issues in this connection. As my delegation said yesterday, when we addressed the General Assembly on behalf of the European Union, this situation continues to be of serious concern to us. The resumption of relations of trust and cooperation between the Tribunal and Rwanda, given tangible expression by the appointment in October 1999 of a representative of the Rwandan Government to the Tribunal, and by the visit in May 2000 by Ms. Del Ponte to Kigali, are positive developments.

The experience of the two Tribunals has enabled us to become aware of just how important the question of victims' access to the Tribunal and their protection is. It is essential for the victims of those crimes to be assured that the responsibility of their aggressors will be dealt with before the Tribunal and that the victims will enjoy the services of counsel and support. It is also essential to ensure protection for the witnesses and victims who appear before the Tribunal. We particularly welcome the witness assistance programme, as well as the counselling and support services made available to them with the financial backing of the European Union. France also hopes to have the situation of the victims recognized in the context of the procedures at the International Criminal Tribunal.

The two Tribunals have played a pioneering role, contributing to the work that led to the Rome Statute of the International Criminal Court. They serve as a prototype for a new kind of jurisdiction, making it possible to ensure respect for international humanitarian law. The judgements handed down also attest to the international community's intention to put an end to the impunity that too often in the past had gone hand in hand with international humanitarian law violations and serious human rights violations.

Both of these International Tribunals have a heavy workload and a burdensome and demanding set of responsibilities. They can count on France for unfailing support in their work for justice in connection with the most serious crimes and in their contribution to the consolidation of peace.

Mr. Heinbecker (Canada) *(spoke in French)*: My delegation joins others in extending a welcome to Presidents Jorda and Pillay and to Chief Prosecutor Del Ponte. We are obliged to them for their reports on the important work being done by both ad hoc Tribunals for crimes against humanity.

(spoke in English)

Canada believes deeply that the Tribunals play a crucial role in the promotion of human security by ending impunity for the most serious crimes known to humanity and thereby creating an enduring foundation for peace.

The effectiveness of the Tribunals and progress towards the International Criminal Court help to prevent conflict. They demonstrate to potential perpetrators that war crimes and crimes against humanity will not be allowed to stand.

This year has brought many positive changes in the functioning of the Tribunals. We have seen an improvement in the cooperation of the new Croatian leadership with the International Criminal Tribunal for the Former Yugoslavia (ICTY). We are at the same time disappointed by the Prosecutor's report that Croatia's cooperation has not yet reached the standard required.

We are encouraged by the recent announcement that the Chief Prosecutor will be travelling to Belgrade and that the Office of the Prosecutor in Belgrade will soon be reopened. This marks an important first step in the process of normalizing relations between the Federal Republic of Yugoslavia and the Tribunal, and between the Federal Republic of Yugoslavia and the international community more generally. In this regard, my Government would be interested in having Ms. Del

Ponte's views on how changes in the Federal Republic of Yugoslavia will affect or are affecting the work of the Tribunal.

We note the Prosecutor's plea that more effort is required to deliver all indicted war criminals to The Hague. As Judge Jorda said, the highest-ranking political and military officials remain at large. And as Prosecutor Del Ponte said, Milosević, Mladić and Karadzić, too, must be brought to The Hague. This Council cannot fail to recognize that there is a world of difference between election fraud and government corruption, on the one hand, and war crimes and crimes against humanity, on the other.

Canada firmly believes that cooperation from all countries of the former Yugoslavia with the ICTY is essential for justice and reconciliation in the Balkans.

Furthermore, we recognize the valuable role the ICTY is playing in developing international law in an unbiased and independent manner. We urge all States members of the Council to support the work of the Tribunal and not to cast doubt upon it. I would recall again that the Tribunal is integral to conflict prevention in the Balkans by bringing the truth to light and by redressing grievances that might otherwise fuel the next generation's Balkan war.

It is unacceptable that individuals who have been publicly indicted by that Tribunal continue to participate in politics. We call on those countries that continue to harbour such indictees to transfer them to The Hague promptly.

Canada is also pleased with the improvement over the past year in relations between the International Criminal Tribunal for Rwanda (ICTR) and the Government of Rwanda. These relations will no doubt be helped by the announcement of two recent initiatives: the opening of the ICTR information and documentation centre in Kigali, which will improve access of the Rwandan people to the work of the Tribunal, and the launch of the Support Programme for Witnesses and Potential Witnesses, which will provide important services such as legal guidance, psychological counselling, physical rehabilitation and reintegration assistance.

We note that crimes of sexual violence are being addressed in an ever-more comprehensive manner and that reforms have been, and are being, made by both Tribunals to ensure that those who have suffered or witnessed terrible crimes will be dealt with in a sensitive way.

Over the past year, both Tribunals have taken steps to implement the Expert Group report in order to improve efficiency and streamline the work of the Tribunals. These improvements are key to ensuring that the Tribunals' budgets are being used effectively and that the rights of the accused are respected.

To this end, we support proposals to amend the statutes of the Tribunals to add additional ICTR judges to the joint Appeals Chamber and to create a pool of *ad litem* judges in the ICTY. These important initiatives will assist the Tribunals in speeding up the pace of prosecutions, thereby ensuring swifter justice. In and of themselves, these reforms will accelerate the completion of the mandate of the Tribunal. The end result is that the Tribunals will finish their work earlier. We recommend that these statutory amendments be adopted as soon as possible.

(*spoke in French*)

The work of both ad hoc Tribunals has set an important and lasting precedent with regard to the International Criminal Court. We thus encourage both Tribunals to continue improving their internal operations.

For our part, we will continue to provide support and assistance.

Mr. Eldon (United Kingdom): It is now well after noon, and with 10 speakers still to go I will not attempt to make a comprehensive statement. But I do want to try to draw some threads together from this very important and significant meeting.

It is very welcome that the two Presidents and the Prosecutor have come to the Council together to report to us. This is partly because, taken together, they are able to give us a full and comprehensive picture of the work of the Tribunals, and because it is imperative that all the organs of the Tribunals work together to tackle problems and maximize efficiency.

The United Kingdom remains strongly committed to the Tribunals and fully supports the Prosecutor's continuing investigation of atrocities and bringing to trial of alleged perpetrators of crimes in Rwanda and the former Yugoslavia. We are playing our part, including having recently transferred one indictee to Arusha who was apprehended in the United Kingdom.

We played our part in the court management report and visit to the Rwanda Tribunal, which Judge Pillay mentioned. For the second year running, we have provided a scenes-of-crime forensic team to work in Kosovo.

As I think all three of our visitors have said, the past year has seen welcome progress. We, like others, hope that recent political developments in the former Yugoslavia will lead in the near future to further positive developments. I think that Ms. Del Ponte's news of her intention to travel to Belgrade and of the early reopening of the office of the International Criminal Tribunal for the Former Yugoslavia (ICTY) there is very good news.

The key issue remains that those who are alleged to have committed war crimes and crimes against humanity must be brought to justice. I would merely observe, as Ambassador Heinbecker has done, that I think that it is incumbent upon all members of the Council to stand behind the institutions they have created in view of the importance of the mission of both Tribunals. Frankly, there are still too many indictees at large. This should be of concern to us all. As far as the United Kingdom is concerned, we call on all States to fulfil their obligations under the Security Council resolutions and to arrest indictees when they are in their jurisdiction.

Now is not the time to set a date for the ending of either the ICTY temporal jurisdiction or of its mandate. Too many important indictees remain at large and, once those have been sent to The Hague, we will have a better idea of when the Tribunal will be able to finish its work.

I would now like to focus on measures to speed up the work of the Tribunals. As others have said, a Council working group is currently studying Judge Jorda's proposals for the appointment of additional *ad litem* judges. We welcome all proposals aimed at speeding up the judicial process. We believe — and I think this has been borne out by what my colleagues have said here this morning — that all Council members recognize the importance of moving ahead quickly in this area. We hope, like others, that we will be able to reach agreement on Judge Jorda's proposals during your presidency, Sir.

The issues of compensation and the involvement of victims, which were raised by Ms. Del Ponte, will, I think, require further careful study. The involvement of victims is something which has the potential to break new legal ground and, obviously, there are resource implications about the compensation issue.

On the ICTY, I would endorse fully Ambassador Levitte's remarks about the need to make full use of the human and other resources available to the Tribunal. I listened with interest to Judge Pillay's remarks about the use of Trial Chambers. I hope that the Tribunal will be able to figure out further ways of increasing the efficiency of the use of its resources. It is clear that there have been administrative problems and we hope that the visit by the court consultant will be able to clear those up, but it is clearly important that the Registry and other parts of the Tribunal should function effectively and efficiently and provide a good, effective and expeditious service.

Finally, I noted Judge Pillay's suggestion, which was repeated by Ms. Del Ponte, of a possible move of the Tribunal to Kigali. While understanding the natural wish of the people and Government of Rwanda to feel more involved in the trial process, I would like to say that I think this, too, requires careful consideration. The Council would, I think, be irresponsible not to take account of the resource implications and, having set up the Tribunal in Arusha, one needs to be careful not to rush too quickly into dismantling what has been established at such cost and with painstaking care.

Mr. Cappagli (Argentina) (*spoke in Spanish*): At the outset, I wish to thank the Presidents of the International Criminal Tribunals for Rwanda and the Former Yugoslavia, as well as Prosecutor Carla Del Ponte, for their briefings to the Council and for the work they are undertaking.

Years ago, the Security Council, guided by the need to respond to the demand for justice in the face of the tragic events in Yugoslavia and Rwanda, decided to establish special criminal tribunals to try the most serious crimes perpetrated there. The end of the cold war, the new relations of power that emerged from that development in the international system, and the confirmation of the fact that only the rule of law can secure peace all helped to build the consensus needed to adopt this revolutionary initiative, which Argentina supported from the very outset, when no one yet knew for certain whether it had any chance of success and its very legitimacy was in question.

Over the years, the support of the Council, the financial and political backing of many States and the

outstanding professional calibre of the judges, prosecutors and officers of both Tribunals have enabled the achievement of very positive results that have had an impact in the field of human rights, contributing in large measure to the establishment of the International Criminal Court.

When the special Criminal Tribunals finish their work a few years hence, the International Criminal Court will be the competent international forum for trying this type of crime. There will no longer be a need to create ad hoc juridical remedies in the face of massive human rights violations, as the Council has had to do this very year. By that time, humanity will have made one of the most far-reaching strides ever taken in the fight for the fundamental rights and freedoms of individuals. It is possible that, without the positive impulse provided by the decision to create and maintain these Tribunals, that progress would have been achieved only after many further years.

In considering this year's presentations of the Prosecutor, Ms. Del Ponte, and of the President of the International Criminal Tribunal for the Former Yugoslavia, the Council has noted that one of the primary difficulties encountered lies in the lack of cooperation of some States that may frustrate the arrest of indictees.

Fortunately, major progress has been made this year. In the Balkans, political developments in February in Croatia and recently in the Federal Republic of Yugoslavia give us far more tangible reason to hope for improved cooperation with the Tribunal and for measures to comply with the obligation to detain and bring before the Tribunal all indictees. We are delighted to note that, this year alone, one third of the 38 accused have now been arrested. As we recalled last June and have stressed on other occasions, States are obliged to ensure such detentions.

The Rwanda Tribunal, having spent a great deal of time trying to remove administrative and other obstacles, finally adopted appropriate measures to overcome them and received the support of a number of countries, making it possible to arrest some accused, and it has just confirmed its first sentence for genocide upon a head of government.

Notwithstanding that, the Tribunals are still encountering major problems of various kinds. The International Criminal Tribunal for the Former Yugoslavia (ICTY), which is already working at maximum capacity, must nonetheless cope with a growing workload. This situation must be resolved so as to avoid paralysing the process or excessively prolonging detentions and trials. To remedy this situation, its President requested the Council in May to adopt a set of measures, the most significant including the installation of *ad litem* judges and an increase in the membership of the Appeals Chamber. The Security Council established a working group which met a number of times. Senior officials of the ICTY travelled to New York frequently and, together with Council members, analysed all the doubts that were voiced, debating them exhaustively and in depth.

This analysis made it possible to make decisive progress towards adoption of the measures. We note with satisfaction that this has opened the way to the idea that the *ad litem* judges should be elected, which we believe will guarantee, as we pointed out last June, their legitimacy to pass judgement. It is also necessary for the Council, in assigning jurisdiction over specific cases to *ad litem* judges, to be guided by the premise that the Tribunal's independence should be fully guaranteed, thus ensuring for the peoples that have endured so tragic a conflict the certainty of its impartiality.

My delegation believes that the Council is already adequately prepared to incorporate the Statute reforms, so they must be adopted as soon as possible. We would very much have liked this meeting to be the opportunity for doing so. We still hope that we can take that step in what remains of this year.

Mr. Lavrov (Russian Federation) *(spoke in Russian)*: I too would like to thank the Presidents of the Tribunals and the Prosecutor for providing the Council with information. We welcome the efforts of the judges to improve the work of the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR). We understand their dissatisfaction with the speed and methods of operation of these two judicial mechanisms. At the same time, we have many other concerns that we discussed in the General Assembly on 20 November.

Everyone is well aware that Russia has consistently and for a long time raised the question of the continuing distortions in the activities of the ICTY. Today, here in the Council, Mrs. Carla Del Ponte found it possible to call Russia's position groundless and at

the same time to complain that the Russian Government did not invite her to Moscow. I think that such statements do not add anything and are inappropriate.

The name plates in front of us are very small and I understand, therefore, why the name plate in front of Mrs. Carla Del Ponte has only the word "Prosecutor". In fact, we are very well aware that her title is Prosecutor for the ICTY and the ICTR, but this does not give her the right to level accusations at the members of the Council, particularly since none of the questions that we have been raising for many years have yet received satisfactory replies, although Mrs. Del Ponte has said that she has the answers.

So we once again find it necessary to set forth our position with regard to the ICTY and to emphasize that when it established the Tribunal the international community assumed that it would play an important role in settling the crisis on the territory of the former Yugoslavia, independently of political considerations. However, instead, right from the beginning, the activities of the ICTY proved to be politicized, and the Tribunal adopted a clear anti-Serbian stance, often closing its eyes to cases of non-observance of the norms of international humanitarian law by other parties to the conflict.

When there was information about possible violations by the Federal Republic of Yugoslavia, the Prosecutor immediately made accusations, as in the Kosovo situation, but when peaceful populations were dying and civilian targets were being destroyed in Yugoslavia as a result of North Atlantic Treaty Organization (NATO) air strikes, the Tribunal found no grounds to carry out investigations.

In spite of our many requests, the Security Council has thus far received no information about the course of the investigations into the tragedy in Racak.

In recent years, the Tribunal, instead of strictly applying the norms of international humanitarian law, has repeatedly amended them as it saw fit and has given them convenient interpretations. We share the view of the President of the International Court that such activities constitute a threat to the integrity of international law. We have often questioned the Prosecutor's practice of moving sealed indictments and transmitting them not only to States, but also to international bodies. We have also spoken many times about agreements between the ICTY and NATO not being legitimate. They are still secret and still in contradiction of the decisions of the Security Council; they have actually sanctioned the activities of NATO troops in the Stabilization Force (SFOR) in hunting down the accused. During such operations there have been instances of violations of the borders of sovereign States and many killings of suspects. The most recent such case took place last October.

We have a question about whether the international community should be financing those activities of the ICTY which exceed the mandate of the Tribunal and undermine confidence in the impartiality and fairness of its actions. Russia feels it necessary, particularly taking into account the latest developments in the Balkans, to conduct an exhaustive review of the activities of the ICTY to clarify the scope of its work, its working methods and how long it should be working. The Tribunal was established, under quite different historical circumstances, as a special ad hoc body with the purpose of restoring and maintaining peace in the region. We now hear forecasts that the ICTY will need a further 15 to 20 years, which gives us serious reason to wonder about why such a temporary body should operate for such a long time. And, apart from the clear political aspects, it is necessary also to consider the colossal financial burden — in the neighbourhood of $1.5 billion to $2 billion — that will be placed upon the United Nations should the Tribunal continue to operate for such a long time.

In that connection, we take a positive view of proposal to enhance the Tribunal's effectiveness and to accelerate its judicial activities by, inter alia, reinforcing the Appeals Chamber by creating a pool of *ad litem* judges and by making more active use of the powers of senior judges during the pre-trial phase.

At the same time, we think it important to give maximal consideration to other aspects of the Tribunal's activities and to consider other recommendations and views, particularly the recommendations found in the report of the Expert Group to Conduct a Review of the Effective Operation and Functioning of the ICTY and the ICTR, annexed to document S/2000/597. We think it is time to establish more clearly the temporary nature of the jurisdiction of the ICTY in accordance with the provisions of resolution 827 (1993) of 25 May 1993.

We must not forget that the main responsibility for punishing those guilty of gross violations of

international humanitarian law remains with the State. The Tribunal is supposed to concentrate on particular crimes when the State for various reasons is not in a position to investigate them independently, or when there are serious grounds to think that national criminal investigations would not be impartial or independent. I speak in such detail simply to remind members and others present at this meeting of the conditions under which the Tribunal was established, lest it appear that somebody has invented all this.

Accelerating justice not only by increasing the number of judges in the ICTY but also by clarifying the priorities of the Prosecutor's work, by ensuring closer interaction between the Tribunal and the national judicial systems of the States of the former Yugoslavia and, in particular, through the Tribunal's strict implementation of all the provisions of its statute and of the relevant resolutions of the Security Council.

Turning to the International Criminal Tribunal for Rwanda, it is our view that at present its work does not adequately address the purposes for which it was established. Its prosecution of persons responsible for genocide, war crimes and crimes against humanity continues, unfortunately, to be slow and not very effective. We understand that the Rwanda Tribunal was obliged to begin its work at point zero, and that to carry out its work it is important that it resolve its administrative and operational problems. The Tribunal leadership is working hard on those matters.

At the same time, during the Tribunal's six years of operation, it has been able to pass only seven sentences; 42 people remain in detention, 35 of whom are awaiting trial. Every year we have consistently seen an increase in the budget and in the staff of the ICTR. Here too, we wish to refer to the report of the Group of Experts, which contains recommendations for resolving the problems in the activities of the ICTR.

Let me conclude by saying that the Russian Federation is ready to continue to support efforts to remedy the deficiencies and the organizational problems in the work of the Tribunals for the former Yugoslavia and for Rwanda in order to make sure that they operate in accordance with the mandates adopted by the Security Council.

Mr. Mohammad Kamal (Malaysia): My delegation too warmly welcomes to the Council Chamber Judge Claude Jorda, President of the International Criminal Tribunal for the Former Yugoslavia (ICTY), Judge Navanethem Pillay, President of the International Criminal Tribunal for Rwanda (ICTR), and Ms. Carla Del Ponte, Prosecutor of the two Tribunals. We thank them for their very useful and candid briefings this morning and for the annual reports of the Tribunals, which are before the Council.

Malaysia views the establishment of these two ad hoc Tribunals as an important milestone in the application of international law with respect to the prosecution of individuals accused of committing war crimes, genocide and crimes against humanity. Malaysia continues to be concerned at the long delays faced by the Tribunals. However, we are grateful for the in-depth analysis of the work of the Tribunals which has been presented to the Council, and we appreciate the extensive nature of the proposals, all of which are intended to ensure the efficient and effective functioning of the Tribunals.

We are in favour of a simplified and pragmatic approach to the consideration of proposed reform of the operation and structure of the Tribunals, an approach that would lead to expediting the trial process but that would not sacrifice or compromise the quality of that process. At this juncture, Malaysia will not pronounce itself on the specifics of the various recommendations, as they are still being actively discussed by the Council at the working group level. Suffice it to say that we find the proposals presented by the Tribunals to have a great deal of merit and to deserve the Council's serious attention and consideration. We have been and will continue to be constructive in our approach. We are confident that the Council will in due course arrive at the appropriate decisions on the various proposals and recommendations presented to it.

The meting out of justice to persons who have been indicted on war crimes, genocide and other crimes against humanity is vitally important for the international community, not just to affirm our common humanity and values, but also to meet the pragmatic political need of correcting past wrongs through the legal process, thereby contributing concretely to the healing and reconciliation process in both regions, without which there will be no viable peace in the countries concerned.

We wish to commend the manner in which the Tribunals' Victims and Witnesses Section has handled

the important issue of protective measures for witnesses appearing before the Tribunals and of providing counselling and support, including by gender experts. We wish to commend also the community of non-governmental organizations for its contributions and assistance in that regard.

Cooperation by Member States is vitally important to the successful conduct of the work of the Tribunals. That is particularly true with respect to the execution of arrest warrants, provisional detention and the transfer of suspects and accused persons to the seats of the Tribunals. Clearly, the prompt and effective execution of arrest warrants issued by the Tribunals has been and will continue to be critical to the Tribunals' ability to function effectively. In that connection, we agree with representative of Bangladesh, who said in his statement a moment ago that justice delayed was justice denied.

We note with satisfaction that, although imperfect and still problematic, cooperation between Member States and the Tribunal has improved in that much evidence has been forwarded to the ICTY and arrests of indictees have increased significantly. However, we are deeply concerned that some well-known indicted criminals have not been apprehended, even though they were indicted five years ago. We call on all Member States of the Organization, particularly the Federal Republic of Yugoslavia, to give their fullest cooperation to the Tribunal so that a lasting and durable peace can be achieved in the Balkans.

In conclusion, the Tribunals deserve the unqualified support and encouragement of the Council in all aspects of their work. The issue of indicted war criminals still at large must be seriously addressed by the Council and the rest of the international community. As Judge Claude Jorda aptly stated in his briefing this morning, the International Tribunal is the guarantor of the peace and security of mankind. Peace without justice is like music without instruments.

Mr. Wang Yingfan (China) (*spoke in Chinese*): May I begin by thanking President Jorda of the International Criminal Tribunal for the Former Yugoslavia(ICTY), President Pillay of the International Criminal Tribunal for Rwanda (ICTR) and the Chief Prosecutor for the two Tribunals, Ms. Del Ponte, for their briefings, which provide us with a useful basis for our annual review of their work.

As international criminal justice institutions established by the Security Council, the Tribunals' independence and impartiality are of paramount importance. The Council had two goals in creating these ad hoc Tribunals. On the one hand, the Tribunals are to conduct fair trials of persons accused of serious violations of international humanitarian law and render justice to the victims of the crimes in question, while helping to prevent the future perpetration of similar atrocities. On the other hand, the Tribunals are to facilitate peace and reconciliation in the regions concerned. Security Council resolutions 808 (1993), 827 (1993), 955 (1994), 1165 (1998) and 1166 (1998) all emphasized the contributions of the work of the ad hoc Tribunals to the national reconciliation process and the restoration of peace and security in the regions and countries concerned. In carrying out their work, the ad hoc Tribunals should bear in mind the dual functions I have mentioned, and fully accomplish their mission in a just manner.

Important progress has been made in many aspects of the Tribunals' work. However, we have also found considerable inadequacies in their operation. We have serious reservations about the conclusion of the Prosecutor that there is no basis for opening an investigation into allegations of crimes or serious violations of international humanitarian law during the bombings by the North Atlantic Treaty Organization of the Federal Republic of Yugoslavia.

We support in principle the ICTY's proposals for reform by taking effective measures to accelerate its proceedings with a view to fulfilling its mandate within a reasonable timeframe. We do not think that a mere increase in its trial capacity will be sufficient to achieve that goal. We believe that in view of the major political changes in the former Yugoslavia, the Council should determine in an opportune fashion the ending date of the Tribunal's temporal jurisdiction. In that regard, we support the views expressed by the Russian representative.

In addition, the Tribunal should also consider further measures to reduce its caseload. For instance, where conditions permit, certain cases involving crimes by lower-level persons should be transferred to national courts in the countries of the former Yugoslavia. It should also explore the possibility of resorting to some sort of truth and reconciliation process. In our opinion, all these issues should be seriously considered and discussed within the

framework of the Council's informal Working Group on ad hoc tribunals.

Before concluding, I would like to say that we have taken note of the Tribunal's optimism in paragraph 350 of its seventh report (S/2000/777) about the completion by 2007 of its mission, or at least its trial mission. We are ready to actively consider the necessary measures to meet that time-bound target.

Miss Durrant (Jamaica): Jamaica welcomes the presence of Judge Claude Jorda, President of the International Criminal Tribunal for the Former Yugoslavia (ICTY); Judge Pillay, President of the International Criminal Tribunal for Rwanda (ICTR); and Ms. Carla Del Ponte, Chief Prosecutor for the ICTY and the ICTR. We thank them for their informative briefings, which provide the framework for the Council's review of the work of the Tribunals.

The Tribunals were established to bring to justice those guilty of war crimes, thereby helping to create a new environment in which the past can be put to rest and the proper foundation for reconciliation laid. It is therefore imperative that we continue to support the work of the Tribunals as they seek to fulfil the mandates entrusted to them by the Security Council.

With regard to the work of the ICTY, we have all acknowledged the importance of the Tribunal's concluding its work in the shortest possible time. We continue to believe that, as my colleague from Malaysia has just repeated, justice delayed is justice denied. The Security Council must therefore take early action on the recommendations before us for consideration. The Working Group established by the Council to assess and implement those recommendations has been making good progress, and there appears to be broad consensus for increasing the capacity of the Trial Chambers and for the use of *ad litem* judges. We still have to determine how best to amend the Statute to accommodate those proposals. As we ponder the process for the selection and appointment of *ad litem* judges — should we decide that they should be appointed — my delegation would express its support for that to be done by the process of elections, which would take into account the principle of equitable geographic distribution, as well as the representation of the various legal systems of the world. We are confident that the Council will be able to complete that work shortly, so as to provide the Tribunal with the essential tools for its work.

Other issues have been brought before the Council for its consideration, including the compensation of persons wrongfully detained, prosecuted or convicted. This is an issue we feel must be considered very carefully. We need to be very clear about who should be compensated, the manner in which those persons are compensated, and the implications for the work of the Tribunal and for the United Nations.

With regard to Rwanda, we were pleased to learn from Judge Pillay that, despite the initial delays in moving the trials forward, the ICTR can be expected to complete the trials of the current indictees within the period mandated by the Statute. We are also pleased to learn from her that there are signs of improvement in the environment in Rwanda as a result of the work of the ICTR.

The recent political developments in the Balkans provide further impetus for the conclusion of the work of the ICTY as soon as possible. The political landscape is different now from what it was a few years ago. We are pleased to note the cooperation between the States involved and the Tribunal has improved, and we are optimistic that this trend will continue. The proposals put forward today by the Chief Prosecutor, namely that in order to bring justice to the Balkans, certain restrictive provisions in the Statute circumscribing the jurisdiction of the ICTY should be reviewed and acted upon.

In conclusion, my delegation wishes to commend the work done by the Presidents of the Tribunals, the Prosecutor, the Judges and the officials, and assure them of our continued support.

Mr. Krokhmal (Ukraine): I would like to welcome Judge Pillay, Judge Jorda and Chief Prosecutor Del Ponte and to thank them for their comprehensive and interesting briefings. I also wish to take this opportunity to pay tribute to all the judges of the Tribunals for their dedicated work and tireless efforts in discharging their mandate.

Some six months ago the Council discussed in an open meeting the Carlsson report on the Rwanda genocide, and the memory of that debate is still fresh. Later this year the Security Council adopted a presidential statement on the anniversary of the massacre that followed the fall of Srebrenica.

Those tragic events became in a way symbols of the most distressing failures of this Organization, which prompted serious reconsideration by the United Nations of its policies and standards in a number of areas, including peacekeeping, conflict management and prevention and others. The scale and brutality of the crimes perpetrated in the former Yugoslavia and Rwanda, as well as the need to enforce respect for international humanitarian law in the future, called for the creation of a credible universal system of criminal justice, which later culminated in the adoption of the Rome Statute of the International Criminal Court.

Previous discussions in the Council and the General Assembly, including yesterday's debate, underscored the important role the Tribunals play in meting out justice and healing the wounds caused by the human tragedies that shook Rwanda and the former Yugoslavia. No less important is their role in the process of reconciliation and restoring peace in the respective regions. It is, therefore, imperative for those judicial institutions to maintain the highest standards of impartiality and to remain free of any political considerations in their activities. Although, as we can see, this task is the most difficult one to achieve, it remains an indispensable component of their effective work.

My delegation notes the latest report on the work of the International Tribunal for Rwanda (ICTR) that was presented yesterday by Judge Pillay and was discussed by the General Assembly. It is noteworthy that despite significant difficulties and problems faced by the ICTR, developments since November 1999 have given us grounds for optimism. The resumption of cooperation between Rwanda and the ICTR and the recent inauguration of the Information and Documentation Centre, the increased number of arrests of high-ranking officials involved in the massacres in 1994 and their transfer to the ICTR, including the transfer of Mr. Ntakirutimana to Arusha, the enhanced cooperation of African States in tracking, arresting and transporting indicted suspects to Arusha, the growing number of judgements rendered by the Tribunal, the successful management of many administrative and logistical difficulties and many other developments are all signs of the ICTR's improved performance in the past year.

We are particularly pleased by the efforts of the Tribunal to ensure that the significant number of cases before the ICTR and the excessive number of motions filed by parties in cases do not slow down or prolong trials. The Barayagwiza case is an unfortunate precedent that should not occur again. In this connection, we welcome additional measures taken by the Office of the Prosecutor and the judges of the ICTR to identify problems and to reduce delays in the future, in particular the amendments to the Rules of Procedure and Evidence that allowed the pre-trial motions to be dispensed more expeditiously. I would like to welcome the Prosecutor's intention to require the Trial Chambers to hold trials in Rwanda.

We also wish to emphasise the important role played by the International Tribunal for the Former Yugoslavia (ICTY) in bringing about significant changes in the political scene of the Balkans in the past year. By contributing to these changes, it has successfully carried out the main part of its mandate, aimed at restoring peace in the region. We therefore consider extremely appropriate the conclusion by the judges of the ICTY that the Tribunal has reached a turning point in its history.

This situation calls for a careful examination of many aspects of the Tribunal's work in the new circumstances. Earlier this year, in anticipation of these changes, the judges of the Tribunal undertook a forward-looking analysis of its activities, which included such issues as the long-term planning of the Tribunal's operation, the length of its mandate and future relations with the International Criminal Court. My delegation welcomes these initiatives and fully supports the work of the Council working group, established to address all these issues in a comprehensive manner.

On another track, we are pleased to note the continued work of the Tribunal on the implementation of recommendations of the Expert Group, mandated by the Secretary-General pursuant to General Assembly resolution 53/212 and resolution 53/213, including the measures already undertaken by the ICTY to expedite proceedings.

The goal to accomplish its mandate within the shortest possible period of time, possibly by 2007, as outlined in Judge Jorda's statement, or even sooner, requires that more decisive steps be taken in different directions. While recognizing the huge workload facing the Tribunal and the number of cases expected following the opening of further investigations by the Prosecutor, I cannot but recall that the improved

political situation in the Balkans, the development of democratic institutions and the strengthening of national judicial systems make it possible and practicable for the Tribunal to fully use the existing mechanisms under the Statute and its Rules of Procedure and Evidence to defer its competence in respect of particular cases to the national courts in the former Yugoslavia that have concurrent jurisdiction to prosecute persons for violations of international humanitarian law and to transfer the accused, if in the custody of the Tribunal, to the authorities of the State concerned.

The monitoring of the proceedings before national courts by the Prosecutor, coupled with the possibility for the Tribunal to rescind the order and to request the deferral of a case to the competence of the ICTY, would ensure the impartiality, fairness and integrity of such trials in national courts. This, in turn, would substantially relieve the workload of the ICTY and allow it to concentrate on the most prominent cases and the prosecution of those most responsible for the commission of crimes within the jurisdiction of the Tribunal. It would also certainly encourage the further cooperation of States with the Tribunal. My delegation will advocate such an approach in the future meetings of the working group.

My delegation also notes the request by the Chief Prosecutor to amend article 5 of the ICTY statute. We consider that request to be very interesting, and will study it very carefully.

As has already been indicated by my delegation on previous occasions, the absence on the Tribunal of judges from Eastern Europe is an issue of concern for my delegation. One could hardly imagine the Rwanda Tribunal without African judges. The wide representation of judges from all regional groups on the Tribunal — as is the case in almost all United Nations organs, including the ICTR — is important for the effectiveness and credibility of this body. We have made relevant proposals for amendments to the Tribunal's statute and call on other delegations to consider them positively.

It is my hope that this criticism of the composition of the ICTY will not be regarded by the Tribunal's officials as groundless. We strongly believe that Member States express their views so that the work of the judicial organs of the Security Council can be improved, and all those views should be respected.

Mr. Ouane (Mali) (*spoke in French*): I should like to join previous speakers in warmly welcoming to the Security Council Judge Jorda, President of the International Criminal Tribunal for the Former Yugoslavia; Ms. Pillay, President of the International Criminal Tribunal for Rwanda; and Ms. Carla Del Ponte, Chief Prosecutor of both Tribunals. I should also like to congratulate our three guests on their exhaustive statements on the progress of work and the activities of the Tribunals, and on the state of the prosecutions under way against those responsible for serious crimes committed in the territory of the former Yugoslavia and of Rwanda.

Mali believes that the International Criminal Tribunals for the Former Yugoslavia and for Rwanda have particularly historic responsibilities. They must therefore function properly and be credible. Indeed, the work of the Tribunals is extremely important because they were set up with a view to putting an end to the impunity that is still enjoyed by some of those who have committed the most heinous crimes — crimes against humanity, war crimes or genocide. The two Tribunals are also playing a pioneering role as important points of reference for the work of the Preparatory Commission for the International Criminal Court. In this regard, my delegation would like to express its satisfaction to President Jorda, Ms. Pillay and Ms. Carla Del Ponte, as well as to the judges of the Tribunals, for their constructive proposals for improving the functioning and efficiency of the International Criminal Tribunals. We welcome the proposals and hope that the Security Council will soon take the appropriate decisions with regard to the proposed amendments to the statutes so as to strengthen the effectiveness of the actions of the Tribunals.

With regard to the International Criminal Tribunal for the Former Yugoslavia, my delegation welcomes the major political changes that have taken place in the Balkans and the recent decision to open a Tribunal office in Belgrade. That gesture is an encouraging sign and demonstrates the will of the new Yugoslav authorities to cooperate fully with the International Criminal Tribunal for the Former Yugoslavia.

With regard to the International Criminal Tribunal for Rwanda, my delegation welcomes the sentence of life imprisonment imposed on Mr. Jean Kambanda, former Prime Minister of Rwanda, for his

part in the genocide. We should recall that the confirmation of this sentence also represents a contribution on the part of the Tribunal to the definition of genocide. Indeed, the International Criminal Tribunal for Rwanda is the first international court to have passed sentence for the crime of genocide, and the Kambanda case shows that henceforth, when such an act of violence is committed, whatever the office or rank of the perpetrator, the crime should not go unpunished.

The International Criminal Tribunals, which share one Prosecutor and one Appeals Chamber, do not, as we know, have their own coercive powers. They depend entirely upon States in that regard. But as has been explained adequately by our three guests this morning, the cooperation of States with the Tribunals is an absolute obligation. Members States must therefore arrest and bring to justice those accused who are residing in their territories, because, as President Jorda rightly pointed out, such individuals seriously endanger international public order, of which the Council is the guarantor.

The cooperation of States is also important with regard to the sentences handed down by the International Criminal Tribunal for Rwanda. In this regard, I must recall that, responding positively to the appeal made by the Secretary-General to Member States, my country was the first to accept for imprisonment persons condemned by the International Criminal Tribunal for Rwanda, and they are serving their sentences in Malian prisons. This constitutes positive support for the work of the International Criminal Tribunal for Rwanda, which is working for justice, for an end to the culture of impunity and for national reconciliation in Rwanda. My delegation joins the Secretary-General and the representatives of the Tribunals who are here today in appealing to Member States to strengthen their cooperation with the International Criminal Tribunal for Rwanda.

In conclusion, I should like to assure President Jorda, President Pillay and Prosecutor Del Ponte of my delegation's support for all the activities they have undertaken to bring to justice those responsible at the highest level for the most serious violations of international humanitarian law.

Mrs. Ashipala-Musavyi (Namibia): I, too, would like to take this opportunity to welcome Judge Jorda, Judge Pillay and Prosecutor Del Ponte to our midst, and to thank them for their comprehensive and useful briefings.

My delegation has been paying special attention to the work of the Tribunals in The Hague and in Arusha, and in this regard we are grateful for their innovative and pragmatic proposals meant to enhance the quality of trial management, speed up the work of the Tribunal and decrease its workload, while protecting the quality and effectiveness of its proceedings.

In this context, my delegation also acknowledges the information provided — including the financial implications for human and logistical resources — by the Office of President Jorda, as well as by the Legal Division of the Secretariat, to the ad hoc working group for its consideration of the proposals presented earlier to the Security Council. Indeed, we concur with other delegations that, in order for the Tribunal to accomplish its tasks, statutory changes should be made to the present statute, and for that reason my delegation has expressed its willingness more than once to work with other delegations in the Security Council.

While Namibia continues to participate in the work of the ad hoc working group of the Security Council considering the Judge's proposals — which work we hope will eventually facilitate the creation of a pool of *ad litem* judges — we do so in full cognizance of the responsibilities of the Security Council and the General Assembly, as well as of the role of the Office of the Secretary-General. We also acknowledge the substantive progress made by the ad hoc working group through its informal consultations on various issues, including the selection process. It would, however, be presumptuous of my delegation to say more, since the working group is in the process of compiling a set of comprehensive proposals with regard to those particular articles of the Statute.

On the idea of compensation, my delegation is flexible about entertaining the possibility of amending the Statute of the Tribunal in order to address the issue of compensation to and participation of victims of crimes that fall within the jurisdiction of the Tribunal. In this connection, we take note of the General Assembly resolution 40/34 of 29 November 1985. However, we think that due consideration should be given to this issue within the limits of available resources.

Mr. Ben Youssef (Tunisia) (*spoke in French*): Allow me to join other delegations in thanking Judge Jorda, Judge Pillay and Chief Prosecutor Carla Del Ponte for their detailed overview of and update on the work done by the two Tribunals.

My delegation shares the various positions expressed earlier by several delegations with regard to the importance of considering the proposals presented by our guests. My delegation, however, also supports the Malaysian proposal, which stresses the importance of taking account of those proposals, while still allowing more time for the Expert Group that is considering the issue and while remaining open to any new proposals.

My delegation would like to stress that it welcomes the establishment of the Council's Expert Group that has been charged with studying the reform of the procedures and Statutes of the International Tribunals for the Former Yugoslavia and Rwanda, in support of the efforts made heretofore by the judges of the two Tribunals — in particular the proposal to make use of *ad litem* judges. Like the representative of the Ukrainian delegation, my delegation takes this opportunity to stress and reaffirm its belief that the selection of these judges and their assignment to the Trial Chambers should reflect an equitable geographical distribution that takes into account the principal judicial systems of the world.

This is all the more important given that — as was wisely stressed by the President of the international Criminal Tribunal for Rwanda in her address to the General Assembly — the jurisprudence produced by these two Tribunals has led to international recognition of the concept of individual criminal responsibility. In effect, the creation of an international justice system has provided a new option for a world that has been desperately searching to replace force with the rule of law. In our view the establishment of the rule of law at the international level is a fundamental means of establishing peace both in Rwanda and in the subregion, as well as in the former Yugoslavia, where the latest political developments and the establishment of democracy will, without question, help turn the page once and for all on a past that has exacerbated tensions in the Balkans. This in turn, we are sure, will encourage all the parties to cooperate with the International Tribunal for the Former Yugoslavia.

As for crimes of genocide and crimes against humanity, today it is commonly acknowledged within the international community that impunity must be banished from the international legal lexicon. We therefore encourage any initiatives under way that are designed to facilitate the work of the Tribunals so as to avoid delays in judgements and, above all, to reduce the costs of operations, the funds for which are strained already given the scarcity of financial resources available to the Tribunals for taking up their important mandates and fulfilling their objectives, which are so vital to the peace and security of the region.

The President: I will now make a statement in my national capacity.

The Netherlands considers the political developments in Yugoslavia encouraging. We regard the decision of the Government of the Federal Republic of Yugoslavia to allow the International Criminal Tribunal for the Former Yugoslavia (ICTY) to reopen its office in Belgrade as a significant first step.

The Netherlands has actively participated in the informal working group of the Security Council, established under the French presidency, to consider the proposals of the ICTY. As the current President, we are working on a Council decision to amend the Statute of the ICTY and the International Criminal Tribunal for Rwanda (ICTR), so that a list of so-called *ad litem* judges may be established and two new judges may be added to the Appeals Chamber. We join the many delegations that have expressed the hope that the Council will succeed in reaching a decision on this matter during the current Dutch presidency.

With regard to the ICTR, the Netherlands is pleased to note the progress that has been made by the Tribunal in speeding up its procedures. We encourage the President to continue her important endeavours to strengthen the Tribunal further. We acknowledge in this respect that much of the work is done on paper and in chambers, but we nevertheless encourage the President to make full use of the trial facilities and all the resources allocated to the Tribunal.

Finally, I would like to assure all our three guests at this meeting that the Netherlands deeply appreciates the role they are playing as officials of institutions that serve as models — or if I may borrow a term from Ambassador Levitte — as prototypes for the International Criminal Court. The International Criminal Court is gaining momentum, not least as a

result of your pioneering work in the development of international criminal law.

I now resume my function as President of the Council.

I would like to give the floor to Mrs. Del Ponte to respond to comments and questions.

Mrs. Del Ponte *(spoke in French)*: I will be quite brief because my view is that the only response required of me is to the question of the representative of Canada as to the effects of the changes in the situation in Yugoslavia. I confirm the opening of the office. In the next few days we are going to be dispatching staff. It now remains to re-establish the office and to find new premises. In any event, we are delighted to be able to open a new chapter in this cooperation and renew our work on the ground. Essentially, there is an urgent need to have access to Serbian witnesses and victims for our investigative activities. For a good ten years a major investigation has been under way, and we have not been able to conclude it because our access to Serbian victims, the opportunity to question them, was blocked. This will be one of our first tasks, so that we can finally wrap up this investigation.

As Council members know, we are also engaged in a financial inquiry into the assets of Mr. Milosević and of those who have been accused along with him. Here also we have done a great deal of work outside the territory of Yugoslavia. Now we must get local cooperation to substantiate the exact source within the country of this money, which has been frozen in several foreign bank accounts.

Of course, quite recently in a matter of great importance there have been, according to our information, a number of the accused for whom there are outstanding arrest warrants and who have taken refuge in Serbia — which territory, until very recently, provided the means of their escaping arrest. We propose to discuss with President Koštunica and the authorities ways to achieve their cooperation in arresting these people and transferring them to The Hague.

There essentially you have it. I must thank you, Mr. President, and the other members of the Security Council for the attention you have given us. We are particularly sensitive to the Council's interest and attention, and we would particularly highlight the Council's support and the fact that it is following the work we do and the constraints under which we are operating and the fact that the Council is able to help us resolve the problems that crop up as we do our work.

The President: I thank Ms. Del Ponte for her comments.

I now give the floor to Judge Pillay to respond to comments and questions raised by Council members.

Judge Pillay: All I wish to do at this stage is to thank the Council for its words of support. I have very carefully noted the suggestions and recommendations and will discuss them fully with the Judges. Of course, we will make every effort to implement them, particularly the Expert Group proposals.

I wish to assure you, Mr. President, that the Judges are by no means satisfied with the record of just seven convictions so far. We intend to do far better than that, particularly now that we are going to begin the year 2001 with fewer constraints and administrative difficulties than we had in the past. We also intend to make full use of the trial facilities and the resources provided to us by the United Nations.

The President: I thank Judge Pillay for her statement.

I now give the floor to Judge Jorda.

Judge Jorda *(spoke in French)*: I, too, will be brief in view of the lateness of the hour and in view of the density of the debate you organized. First, I thank the Council for taking the time to listen to what Judge Pillay, Prosecutor Del Ponte and I have to say. We thank you very warmly.

As my first remark, I want to note the almost unanimous agreement on the reform we proposed in June for the Tribunals. The working group initiated here in the Security Council has done a lot of work, and we are very grateful for that. We know that it has almost finished its labours, and we are very close to an agreement, which could be taken under your presidency, Sir.

What I can say to the representatives who raised a number of questions is that those questions seem very important to us, particularly those that relate to time — whether they concern temporal jurisdiction or deadlines.

As far as temporal jurisdiction is concerned, we Judges think that this is a highly political matter, and it is above all up to the Council. There is nothing I can say here, particularly since these questions of competence will one day come before the Judges.

As to the question of deadlines, I was one of the first to say that an ad hoc Tribunal was not intended to carry on its activities for dozens of years. Now, should we immediately set a date? To the representative of the Russian Federation, who raised the question, I would say that that could be a little premature. We have no idea how fast the arrests will proceed. When I made the proposals in June, we had about one arrest per month, as Ms. Del Ponte has just recalled. Now we are trying to make more arrests. Nor do we know at what pace the indictments are going to proceed. Perhaps the Council could find some flexible formula that at the same time would retain the principle that the Tribunal must have a deadline, but we think that to fix a date would, again, be premature.

A matter that is very important to me is that any delay in adopting this reform will cause damage. I am saying this with a great deal of consideration for what the representative of the Russian Federation said. I think that we cannot at the same time say that we need a date, say we need a deadline, say that the Tribunal must finish its work as soon as possible, and at the same time compromise the reform that everybody around this table has unanimously recognized as justified. So by not taking immediately decisions like that that are within reach, one might hold things up for nearly a whole year, because the budgetary cycle has already started and is going to come to an end fairly soon, in the next few weeks. So I appeal to the Council on behalf of my colleagues, on behalf of the Prosecutor, at least to take a decision on the reforms concerning the *ad litem* judges and the two appeals judges to complement the Chamber, because the Council has seen what productive work the Appeals Chamber has done.

I took note of two other questions, the one about the victims and the one about compensation. On victims, let there be no misinterpretation of our reply. If there are any Tribunals that pay attention to the fate of victims, they are the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda. It is true that, as things stand at present, a whole new system needs to be designed if we want the Judges who are already overloaded to be able to respond to the requests and to the evidence produced in order to compensate the victims for damages.

One thing of great interest to us is the participation of victims in the procedure. This is the subject of complex discussions even among Judges on the provisions of the various legal systems from which they come, but it is an idea that we continue to look at. As for compensation, the Judges are quite unanimous in saying that when somebody is wrongly accused or convicted, there must be some system of reparations.

I noted the statement of the representative of Ukraine on geographical distribution, taking up what the representatives of Tunisia and, I think, Namibia said. Yes, obviously, geographical distribution will be one of the matters that the President of the Tribunal will have to bear in mind when forming the Tribunal. Obviously, one must ensure that the membership will be able to judge cases in accordance with the main principles governing our Organization.

Once again, I want to thank all the representatives who have given us their support.

Perhaps one last point about the International Court of Justice, our big sister — I have never forgotten that it is a body established under the Charter. I am very well acquainted with Judge Guillaume, who presides over it, and I cannot imagine that he has criticized the jurisprudence of the Tribunal. It is true that there are two very different kinds of jurisdiction, and on a given case they may have to adopt positions that may be different or complementary. Actually, the matter Judge Guillaume is raising is a real problem, and I think the Security Council is going to have to address it one of these days: the multiplication of organizations. Perhaps all of us are looking for a normative body that will in some way standardize concepts and ideas. Well, we have not got that far yet. I think it is up to us to define the concepts that will enable us to deal with individual criminal responsibility. This is how we ought to see things for the time being.

I will conclude by reiterating my deep gratitude and by expressing my great satisfaction with the almost general consensus on the reforms we proposed in June. I appeal to you, Mr. President, since you are in charge until the end of this month, to do all you can to ensure that measures are taken so that we can function with the new arrangements that are being considered and

that the members of the Council have almost unanimously approved.

The President: I thank Judge Jorda for the clarifications he has provided.

There are no further speakers on my list. The Security Council has thus concluded the present stage of its consideration of the item on its agenda.

The Security Council will remain seized of the matter.

The meeting rose at 1.40 p.m.